

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, JUDGE

DIVISION I

CACR07-644

BRYAN LEON BOMAN

JANUARY 30, 2008

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| v. | APPELLANT | APPEAL FROM THE SALINE COUNTY CIRCUIT COURT [NO. CR2006-768-2] |
| STATE OF ARKANSAS | APPELLEE | HONORABLE GARY M. ARNOLD, CIRCUIT JUDGE |

AFFIRMED

A Saline County jury convicted appellant Bryan Leon Boman of battery in the first degree. He was sentenced as a habitual offender to sixty years' imprisonment in the Arkansas Department of Correction. Appellant's sole argument on appeal is that the trial court erred in denying his motion for a directed verdict based on insufficient evidence to support the element of intent. We find no error and affirm.

At trial, testimony established that appellant and Natalie Ann Boman married on July 24, 2006, approximately two weeks after they met one another. At the time they married, Ms. Boman had three children (including the victim in this case), and appellant also had three children. At the time of trial, Ms. Boman also had a newborn child.

Ms. Boman was called as the first witness. She testified that after she and appellant began

their relationship, she left her two-year-old child, J.L.W., alone with appellant on only two occasions. On the first occasion, J.L.W. had fallen asleep and because she did not want to wake him, she left him at home alone with appellant while she took her older two children to get a snow cone. She testified that when she returned, J.L.W. “seemed fine.”

On the second occasion (September 18, 2006), approximately four weeks after Bryan moved in with Ms. Boman, Ms. Boman left J.L.W. home with appellant while she went by her grandparents’ home and went to pick up another child at daycare. She was gone approximately thirty minutes. She testified that when she returned home, appellant met her at the door and told her that J.L.W. had been injured. Ms. Boman testified that appellant seemed “scared.” Appellant explained to her that the child was playing outside and that he fell coming inside the back door and hit his head. Ms. Boman described J.L.W. as “lethargic” and somewhat unresponsive to her questions. When she walked him down the hallway to change his clothes, he was “wobbly.” She noticed a large red mark on his forehead. Soon after Ms. Boman returned home, the child began vomiting, and Ms. Boman and appellant immediately took him to the emergency room at Southwest Hospital. Ms. Boman testified that upon arriving at the hospital she gave the doctors the same information appellant had given her when she arrived home that day. However, she testified that she intentionally misled the doctors by telling them that she was at home when the injury occurred. She stated that she did so to avoid her grandparents scolding her for leaving her son alone with someone other than a parent.

Soon after arriving at the emergency room, J.L.W. was transferred to Arkansas Children’s Hospital. The doctors there explained the severity of J.L.W.’s injuries to Ms. Boman. J.L.W.’s injuries consisted of a skull fracture that was inconsistent with the explanation given of his injury.

At trial, Ms. Boman described a red mark on J.L.W.'s forehead that was a result of his falling as he tried to get into his bed. However, she described the larger red mark on his forehead as having happened while he was alone with appellant on September 18, 2006.

The police were unable to question appellant about the child's injuries because they were unable to locate him. When the police questioned Ms. Boman, she explained that after arriving at Children's Hospital, she lost track of appellant and did not hear from him for a couple of days. When asked to describe appellant, she stated that she met appellant when he was working as a bouncer in a bar; however, she had not known appellant to be "violent." She thought he was a "good guy."

The next witness to testify at trial was Benny Reynolds. Mr. Reynolds was Ms. Boman's step-grandfather. He and his wife were very close to Ms. Boman's children and they helped care for the children on numerous occasions. Mr. Reynolds explained that on September 17, 2006, the day before the injury, J.L.W.'s father dropped him off at their house and they kept him overnight. He described his behavior that night as completely normal. He did not notice any injuries on J.L.W.'s body, nor did the child complain of any pain while in his care. The next morning, Mr. Reynolds took J.L.W. to daycare, and he testified that he did not have any marks on his face or ears at that time.

Mr. Reynolds testified that when he arrived at the hospital the evening of September 18, appellant was not sitting with the family in the waiting room. Later, he found appellant sitting in the parking lot in the backseat of Ms. Boman's car. Mr. Reynolds told the court that he instructed appellant to take Ms. Boman's car and go home.

When asked about any previous injuries seen on J.L.W., Mr. Reynolds testified that in

August, he noticed a burned area on J.L.W.'s left foot behind his little toe. Ms. Boman and appellant told him that they had poured Clorox on an ant hill in the yard and that J.L.W. had stepped on the ant hill and burned his foot. Mr. Reynolds testified that the injury to J.L.W.'s foot did not appear consistent with this explanation. Mr. Reynolds also described another occasion when he took J.L.W. to Ms. Boman's home. He stated that J.L.W. cried and begged to go home with him. J.L.W. grabbed Mr. Reynolds's hand and tried to pull him out the door. He concluded by stating that this behavior was not typical for the child.

J.L.W.'s biological father, Jimmy Lee Watson, testified that he had exercised his regular visitation the weekend of September 15 through 17. During the time J.L.W. was at his house, his behavior was normal for a two-year-old, and the child did not complain of any pain with the exception of pain in his thumb. Mr. Watson examined the child's thumb, and there were no signs of redness or swelling. There were no other visible signs of injury to his body and no red marks on his head. After the weekend ended, he took J.L.W. to Mr. Reynolds's home and did not see the child again until he arrived at the hospital on September 18, 2006.

Amber Summers, the daycare worker, testified that she was with J.L.W. while he was in daycare on September 18, 2006. She testified as to the strict policy at the daycare that every injury is reported to the office and a report of the injury is made. She explained that she took her responsibility at the daycare very seriously. Ms. Summers testified that she was "100 percent completely positive that there were no injuries on him" while he was at the daycare.

Officer Jason Castillow with the Shannon Hills Police Department testified that he responded to a call from Southwest Hospital on September 18, 2006. When he arrived, he was informed by the nurse that this was a possible child abuse case and observed several visible injuries to the child.

Specifically, he saw injuries to both ears, the top of his head, and forehead. He described the injuries as very “distinct.” Officer Castillow took statements from Ms. Boman, Mr. Watson, and the grandparents. Ms. Boman told him that the child’s injuries were from the child hitting the door facing. However, Officer Castillow testified that the child’s injuries were not consistent with her statement. Officer Friend testified that based upon the information obtained from interviews of the family members, the officers suspected that appellant was involved in the injuries sustained by the child. After an unsuccessful search for appellant, the police department placed a photograph of him on the news. Appellant turned himself in on September 21, 2006. Officer Friend also testified that the child’s injuries were not consistent with a slip-and-fall accident.

Dr. Jonathan Keuhl testified that on September 18, 2006, he was working as a medical resident at Arkansas Children’s Hospital. On that day, he examined J.L.W. and took part in J.L.W.’s diagnosis and treatment. At the time J.L.W. arrived, x-rays from Southwest Hospital had already confirmed a skull fracture. During Dr. Keuhl’s exam, he observed bruises on J.L.W.’s his face and forehead, bruising on both ears, outside and inside, and on the scalp behind the ear. There was also bruising on the parietal region of his scalp and swelling over the back of his head, the left side of his head, and the left occipital portion of his head. Dr. Keuhl testified that the bruising indicated some sort of trauma, and he suspected child maltreatment. The usual protocol for child maltreatment was implemented at that time, which included lab work to rule out any metabolic or underlying medical causes for injuries, as well as consulting neurosurgeons and ophthalmologists. Dr. Keuhl testified that the bruising on the ears and the skull fracture was, in his opinion, not consistent with an accidental fall.

Dr. Charles Albert James also testified at trial. He is a pediatric radiologist and explained

that, in general, he did not see the patients directly; rather, he looked at images of plain x-rays and more sophisticated imaging such as ultrasound, CT scans, and MRIs. He was asked to review a series of images on September 18, 2006, of J.L.W., assimilate the different examinations by the other doctors, and provide his opinion. His investigation of the data revealed that there were several injuries to the child's body and some of the injuries were different ages. The data from the CT scan showed swelling, which indicated an acute injury. Dr. Glazer found a sub-dural blood hemorrhage just inside the skull. When reviewing the data from the head scan, it showed a bruise of the left occipital tissue and an abnormal break of the skull—the fracture. Dr. James described the skull fracture as being in the shape of a “Y.” He stated that this fracture was “complicated” and was not the kind of fracture seen with only a mild bump of the head.

Other scans of J.L.W.'s body showed a fracture in his arm that was in the process of healing. Dr. James could determine from the scan that the arm fracture was two to six weeks in age. A third fracture was found in his thumb. Because the scan was more difficult to see, it was difficult to determine the age of the thumb fracture. A bone scan, performed on J.L.W. on September 21, 2006, revealed abnormal activity in the rib bones as well. The child had two fractured lower left ribs. It was estimated that the rib injury was approximately six weeks old. These findings led Dr. James to conclude that J.L.W.'s injuries were from “non-accidental trauma.”

Dr. Jerry Jones, a pediatrician and Director of the Center for Children at Risk on the campus of Arkansas Children's Hospital, testified that he was a consultant on this case and examined J.L.W. while he was at the hospital. He observed the child's many injuries and observed bruising on his neck. Dr. Jones testified that the bruising on the child's neck was consistent with finger marks. He opined that the bruising on the neck was typically from an assailant firmly holding the head in order

to stabilize it, and that there were five sites of skin trauma that could not have resulted from one blow to the head. In his opinion, this child was physically abused and suffered from non-accidental trauma.

Yvonne Ogdon was appellant's former wife. She testified that she and appellant had two children together. The youngest child suffered from bradycardia and sleep apnea. Because of her conditions and need to have a heart monitor and breathing monitor, a nurse made regular visits to the home. During one of the nurse's visits, she noticed that the child was very weak and recommended that she be taken to the hospital. At the hospital, the doctors found swelling around her throat. After some testing, it was determined that the swelling was caused by the fact that her jaw was broken in two different areas. Yvonne admitted that there were times that she left the child alone with appellant. After this incident, the child was taken into foster care and later adopted by a family member. Approximately two years later, Yvonne and appellant had a second child. She described a similar incident with the second child. On this particular day, appellant cared for the child while Yvonne was in the shower. After her shower, she heard the baby crying. When Yvonne checked on the child, she saw bruises on the child and a burn on her backside. The child seemed as though she was having trouble breathing, so they took her to the hospital. The doctors described her visible injuries as bruising, human bite marks, and burns. This child was also placed into foster care. Yvonne testified that appellant was unconcerned that both of their children had been placed into foster care. Two years later, appellant admitted to Yvonne that he was responsible for the bruises, bite marks, and burns to their second child. Yvonne believed that appellant also was responsible for the broken jaw bone of the first child. After appellant admitted to abusing their first child, Yvonne ended their relationship.

Appellant provided his own explanation of the events of September 18, 2006. He explained that on that day, he was home alone with J.L.W. while Ms. Boman went to pick up the other children. He stated that he and J.L.W. had gone outside. While outside, J.L.W.'s pants had gotten wet when he sat down in the seat of a swing, so he took the child inside to change his clothes. As the child was coming in the back door, he slipped and hit the back of his head. Appellant testified that J.L.W. did not get up after his fall. He picked him up and the child seemed "limp." He took him into the living room and tried to arouse him. He testified that he wanted to take him to the hospital, but Ms. Boman had their only cell phone and only car. Appellant gave him some juice and a snack and thought he seemed more alert. When Ms. Boman returned home, appellant told her of J.L.W.'s fall. He testified that he told Ms. Boman that the child should probably go to the hospital. After they arrived at Southwest Hospital, he took the older two boys to the nearest gas station to get them a snack and then returned to the hospital. He stated that he was not feeling well from his acid reflux condition, so he went outside to Ms. Boman's vehicle. He testified that Mr. Reynolds told appellant to go home and get his medication and that J.L.W. and the rest of the family were on the way to Arkansas Children's Hospital.

Appellant then testified as to his whereabouts after he left the hospital. He testified that he first traveled to Malvern to inform his sisters of the child's injuries. He then traveled to Hot Springs to the Long Shot Saloon, his former place of employment, to see an old friend. When he found out that his friend was off work that evening, he went to the house of Ms. Boman's friend, Kerry Maddox. He "figured she would be interested in knowing that [J.L.W.] was hurt and that he was at Children's Hospital." He asked Kerry to call the hospital and "find out what was going on." He then went to another friend's house in Hot Springs to spend the night. The next morning, appellant gave this friend gas money and the car to return to Ms. Boman. He spoke to Ms. Boman that day,

and she told him that the police wanted to talk to him about the child's injuries. He told her that he wanted to contact an attorney. That night, a photograph of appellant appeared on the news. Appellant spent that night with another friend. The next morning, he contacted an attorney and told him that he wanted to turn himself in "because [he thought he] had been falsely accused of a crime." The attorney went with him to the Garland County Sheriff's Office where appellant turned himself in to authorities.

When questioned about the visible injuries on J.L.W.'s body, appellant replied that the bruises on the ears were there when J.L.W. returned home from daycare on September 18, and the spot on the back of his head was the result of his fall. As for the injuries his first child with Yvonne sustained, he testified that during an argument with Yvonne, he "slung something way to[o] hard and [he] hit [her] in the jaw." Appellant stated that he pled guilty and was placed on probation for a term of five years for first-degree battery as a result of the child's broken jaw. As for the injuries his second child with Yvonne sustained, he was arrested for the burns and other injuries the child had, and his probation was revoked. He was imprisoned for two years. Appellant claimed that he suffered from a cocaine addiction at that time.

At the conclusion of the testimony and evidence, the jury convicted appellant of first-degree battery and sentenced him as a habitual offender to sixty years' imprisonment. This appeal followed.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Holt v. State*, 85 Ark. App. 308, 151 S.W.3d 1 (2004) (citing *Howard v. State*, 348 Ark. 471, 79 S.W.3d 273 (2002)). When we review a challenge to the sufficiency of the evidence, we will affirm the conviction if there is substantial evidence to support it, when viewed in the light most favorable to

the State. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resort to speculation or conjecture. *Id.* The weighing of evidence lies within the province of the trier of fact, and the appellate court by its determination regarding the credibility of witnesses. *See Williams v. State*, 351 Ark. 215, 91 S.W.3d 54 (2002). Arkansas Code Annotated section 5-13-201(a)(7) (Repl. 2006) states that: A person commits battery in the first degree if the person knowingly, without legal justification, causes serious physical injury to a person he or she knows to be twelve (12) years of age or younger.

Appellant asserts that the State offered insufficient proof of his intent. A criminal defendant's intent or state of mind is seldom capable of proof by direct evidence and must usually be inferred from the circumstances of the crime, and because intent cannot be proven by direct evidence, the fact finder is allowed to draw upon common knowledge and experience to infer it from the circumstances. *Lafort v. State*, 98 Ark. App. 202, ___ S.W.3d ___ (2007) (citing *DeShazer v. State*, 94 Ark. App. 363, 230 S.W.3d 285 (2006)). Because of the difficulty in ascertaining a defendant's intent or state of mind, a presumption exists that a person intends the natural and probable consequences of his or her acts. *Id.* The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004).

Here, appellant's intent to commit first-degree battery is proven by circumstantial evidence. Although appellant offered his own explanation of how J.L.W. sustained his injuries, the finder of fact was not obligated to believe him, as he was the person most interested in the outcome of the case. *Geer v. State*, 75 Ark. App. 147, 55 S.W.3d 312 (2001) (citing *Rankin v. State*, 338 Ark. 723, 1 S.W.3d 14 (1999)). Based on the foregoing, we hold that substantial evidence supports appellant's

conviction for first-degree battery.

Affirmed.

PITTMAN, C.J., and GLADWIN, J., agree.